



State Water Resources Control Board



Winston H. Hickox
*Secretary for
Environmental
Protection*

Division of Water Rights
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Gray Davis
Governor

In Reply Refer
to:330:ELD:28220

JAN 19 2001

Muir Beach Community Services District
c/o Donovan Macfarlane, General Manager
19 Seacape Drive, Star Box 221
Muir Beach, CA 94965-9701

Dear Mr. Macfarlane:

APPLICATION 29331 PERMIT 21085

Enclosed is your water right permit issued by the State Water Resources Control Board (SWRCB) Division of Water Rights (Division) that authorizes the Muir Beach Community Services District (MBCSD) to divert up to 50.6 acre-feet per annum from Redwood Creek in Marin County.

The permit includes the special terms and conditions that were developed as a result of extensive negotiations among the applicant (i.e., the MBCSD) and the protestants (i.e., the California Department of Fish and Game, the California Department of Parks and Recreation and the National Park Service). I would again like to thank all parties for the cooperative approach that resulted in agreement on these terms and conditions.

Please note that Term 9 of the water right permit requires that the MBCSD immediately form a Technical Advisory Committee (TAC) and convene the first meeting of the TAC, as soon as possible, in order to begin preparation of the Adaptive Management Plan.

In addition, please note that Terms 10 and 11 require that the MBCSD complete additional major tasks within six months of the issuance of this permit.

Since the MBCSD is an existing municipal diversion that has been continuously diverting from the underflow for more than 30 years (i.e. prior to the enactment of CEQA) the Division has concluded that the application/project is categorically exempt. A copy of the Notice of Determination is enclosed for your information.

Please note that, with respect to other water rights attaching to this source, the priority of your right is identified by the filing date of your application. Therefore, in times of water shortage, those diverters with water rights senior to yours can take their water first. Additional limitations on your diversion and use of water are specified by the terms of this permit. Please read the terms and conditions of your permit carefully so that you are familiar with your responsibilities as an appropriator of water.

Donovan Macfarlane
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The SWRCB requires that you submit annual reports showing the progress you have made in the construction of your project and the use of water made under this permit that will qualify for licensing purposes. We will mail the forms to you when the reports are due.

After the project has been completed, an inspection will be made to determine the amount of water that has been placed to beneficial use within the terms of the permit. A license will then be issued confirming a right to that amount of water. Please keep sufficient records of your diversion and use of water to facilitate this process.

Please inform us of any changes in address or ownership.

Please call me at (916) 341-5314 if you have any questions.

Sincerely,

Ed Dito
Program Manager
Application and Petition Section

Enclosures (Copy of Permit and Notice of Determination)

cc: National Park Service
c/o Bill Hanson
1201 Oak Ridge Drive, Suite 250
Fort Collins, CO 80525-5596

Department of Fish and Game
c/o Bill Cox
P.O. Box 47
Yountville, CA 94599

Department of Parks and Recreation
c/o Kenneth D. Leigh
Marin District
Muir Woods National Monument
Mill Valley, CA 94941

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**STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD**

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 21085

Application 29331 of Muir Beach Community Services District
 19 Seacape Drive, Star Box 221
 Muir Beach, CA 94965-9701

filed on **August 31, 1988**, has been approved by the State Water Resources Control Board (SWRCB) SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source of water

Source:	Tributary to:
<u>Redwood Creek underflow</u>	<u>Pacific Ocean</u>

within the County of **Marin**

2. Location of point of diversion

By California Coordinate System in Zone 3	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
MBCSD Supply Well; North 506,650 feet and East 1,398,850 feet	SW¼ of NE¼	01*	1S	7W	MD

3. Purpose of use	4. Place of use	Section (Projected)*	Township	Range	Base and Meridian	Acres
Domestic	NW¼ of NW¼	07*	1S	6W	MD	
	SW¼ of NW¼	07*	1S	6W	MD	
	NE¼ of NE¼	12*	1S	7W	MD	
	SE¼ of NE¼	12*	1S	7W	MD	

The place of use is shown on map on file with the SWRCB.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 0.07 cubic feet per second to be diverted from January 1 to December 31 of each year. The maximum amount diverted under this permit shall not exceed 50.6 acre-feet per year. The maximum rate of direct diversion shall not exceed 0.07 cubic feet per second based on a 30-day average.
(0000005A)
6. Complete application of the water to the authorized use shall be made by December 31, 2011.
(0000009)
7. Permittee shall install a device, satisfactory to the State Water Resources Control Board, which is capable of measuring the bypass flows required by the conditions of this permit. Said measuring device shall be properly maintained.
(0060062b)
8. Permittee shall install and maintain devices satisfactory to the State Water Resources Control Board to measure the instantaneous rate of diversion diverted under this permit in cubic feet per second, the daily quantity of water diverted under this permit in gallons per day. A record of such measurements shall be maintained by the permittee, and made available to interested parties upon reasonable request. A copy of the records shall be submitted to the State Water Resources Control Board with the annual "Progress Report by Permittee".
- Permittee shall allow the National Park Service or a designated representative, reasonable access to measuring devices for the purpose of verifying measurement readings.
(000000R)

9. The Muir Beach Community Services District (District) shall prepare an Adaptive Management Plan (Plan), acceptable to the Chief of the Division of Water Rights (Division), that will govern the District's diversion of water from Redwood Creek.

The objective of the Plan is to provide the District with a dependable water supply for municipal use while preserving instream flows necessary to protect threatened and endangered fisheries and other public trust resources in Redwood Creek. The Plan shall be submitted to the Division within six months of the issuance of this permit, or a date that is agreeable to the Technical Advisory Committee and acceptable to the Division. The Plan shall describe specific activities to be completed by the District and the time schedule for implementing those activities. Following approval of the Plan by the Division, the District shall implement the measures included in the Plan, in accordance with the defined time schedule.

To assist in the development of the Plan, the District shall immediately establish a Technical Advisory Committee (TAC) consisting of representatives from the District, the National Park Service (NPS), the California Department of Fish and Game (DFG), the California Department of Parks and Recreation (DPR). Within one month of the issuance of this permit, the TAC shall develop a workplan for the Plan that describes the specific activities to be completed and the time schedule for completing each activity. Until the TAC adopts such a workplan, the draft workplan enclosed in the Division's letter dated May 23, 2000 (interim workplan), shall govern the TAC. The final workplan shall be similar in scope to the interim workplan.

The Plan shall include, at a minimum, the following components:

A) A Water Conservation Plan--A water conservation plan shall be developed by the District taking into consideration the flow and the condition of the fishery resources in Redwood Creek and the minimum instream flows (i.e., flow "thresholds") that will trigger appropriate water conservation measures by the District. The water conservation plan shall include the following elements:

1. Tiered rate structures;
2. Leak detection and repair programs;
3. Public information programs;
4. Low flow facilities;
5. Seasonal limitations on flushing water lines;
6. Seasonal limitations on outside irrigation;
7. Inspection/enforcement provision;
8. Plan review and update frequency;
9. Implementation of best management practices;
10. Restrictive "stepped" conservation measures.

B) A Streamflow Monitoring Program--The Plan shall propose a streamflow monitoring program to be implemented by the District. The Plan shall describe

the type of gage/s, the location of the gage/s, the frequency of streamflow measurements and the method to record and distribute data. In conjunction with this activity, the TAC shall investigate alternative sources of funds and/or determine whether other agencies want to participate in a streamflow monitoring program of Redwood Creek.

C) A Pumping Schedule--The Plan shall establish a pumping schedule that will define the maximum allowable rate of diversion on a yearly, seasonal, daily and hourly basis.

D) A Reporting Schedule--The Plan shall establish requirements for reporting and distributing of data, to include streamflow data, rates of diversion, water use and water conservation measures implemented by the District.

E) A Plan for Revising/Updating the Plan--The Plan shall include a component that establishes procedures for periodic review, evaluation, and revision/updating of the Plan.

(0410500)

10. Within six months of the issuance of this permit, the District shall submit a feasibility study report to the Chief of the Division of Water Rights that evaluates other alternative sources of water that may be available to the District, including the relocation of the District's well to a downstream location, importation of water from the Marin Municipal Water District, desalination, and reclamation (i.e., gray water and reuse systems). The District shall solicit comments and recommendations from the TAC and shall submit a draft copy of the feasibility study report to the TAC for review and comment. The District shall continue to investigate feasible, cost-effective alternative sources of water identified in the feasibility study report, to the extent possible, to reduce the impact of diversions on the public trust resources in Redwood Creek.

(0260300)

Within six months of the issuance of this permit, the District shall submit a report to the Chief of the Division of Water Rights that evaluates the feasibility of constructing additional off-stream water storage facilities with capacities of up to one million gallons. The District shall solicit comments and recommendations from the TAC and shall submit a draft copy of the report to the TAC for review and comment. As soon as practical, the District shall construct additional feasible, cost-effective, off-stream storage facilities.

(0490300)

12. Until the Division approves the District's Adaptive Management Plan, the District shall comply with the following interim measures, in order to protect the public trust resources of Redwood Creek:

During May through November or when streamflow as measured at the Highway 1 Bridge is less than 0.5 cubic feet per second (cfs), but greater than 0.3 cfs, the District shall limit diversions to a maximum of 45,000 gallons per day (gpd) and shall limit diversions to the time period between 8 p.m. and 8 a.m.

When streamflow as measured at the Highway 1 Bridge is equal to or less than 0.3 cfs, the District shall (1) limit diversions to a maximum of 40,000 gpd, (2) limit diversions from 8 p.m. to 8 a.m. and (3) not allow use of water for irrigation or other outside use, except for fire protection or other municipal uses of water that are necessary for public health and safety.

During the interim period of operation, the District shall review the adequacy of these interim measures with the TAC. The TAC shall evaluate whether these measures are necessary and/or whether additional measures are needed during the interim period of operation in order to protect public trust resources. The interim measures described above can be modified, provided the proposed modifications to the interim measures are acceptable to all members of the TAC.

Following approval of the Adaptive Management Plan by the Division, the District shall comply with the terms described in that Plan.

(0400500)

**ALL PERMITS ISSUED BY THE STATE WATER RESOURCES CONTROL BOARD
ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

- A. Permittee shall maintain records of the amount of water diverted and used to enable SWRCB to determine the amount of water that has been applied to beneficial use pursuant to Water Code section 1605.
- B. The amount authorized for appropriation may be reduced in the license if investigation warrants.
- C. Progress reports shall be submitted promptly by permittee when requested by the SWRCB until a license is issued.
- D. Permittee shall allow representatives of the SWRCB and other parties, as may be authorized from time to time by said SWRCB, reasonable access to project works to determine compliance with the terms of this permit.
- E. Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued

pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of SWRCB in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the SWRCB may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the SWRCB also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

- F. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the SWRCB if, after notice to the permittee and an opportunity for hearing, the SWRCB finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the SWRCB finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.
- G. This permit does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain authorization for an incidental take prior to construction or operation of the

project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated:

STATE WATER RESOURCES CONTROL BOARD

Harry M. Schueller
Division Chief